

Commissioner Guzman Aceves

DRAFT

California Public Utilities Commission

Resolution # _____

**Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for
Aboriginal Properties to California Native American Tribes**

Resolution E- _____

On April 6, 2018, the California Public Utilities Commission (Commission) adopted a Tribal Consultation Policy. Consistent with the goals of the Tribal Consultation Policy and Executive Order B-10-11,¹ this policy provides a first right of refusal by California Native American tribes for: lands that the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) has or may recommend to Pacific Gas and Electric Company (PG&E) to dispose of in accordance with the Stewardship Council Land Conservation Plan (LCP); and for any future disposition² of real property currently retained by PG&E that is within the planning units identified in the LCP, but that is not contained within the boundaries of a Federal Energy Regulatory Commission (FERC) jurisdictional project.³

All land currently retained by PG&E that is included in the LCP is referred to here as “retained land,” and all “retained land” located outside the boundaries of FERC jurisdictional projects is referred to here as “non-FERC jurisdictional retained land.”

Executive Order B-10-11 declares that “the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus.” The Executive Order directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to permit elected officials and other representatives of tribal governments to provide meaningful input into the development

¹ Adopted September 19, 2011.

² The use of the terms “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.

³ The LCP was developed in accordance with the Settlement Agreement, dated December 19, 2003, among PG&E and the Commission and the related Stipulation Resolving Issues Regarding the Land Conservation Commitment (Stipulation). See D.03-12-035, D.08-11-043, D.10-08-004. Any transfers of utility property, including real property, require Commission approval pursuant to Public Utilities Code section 851.

of legislation, regulations, rules, and policies on matters that may affect tribal communities.”

As recognized in the Commission’s Tribal Consultation Policy, California is home to over 170 California Native American tribes.⁴ Executive Order B-10-11 applies to federally-recognized tribes and other California Native Americans. For purposes of this policy, the terms “tribes” and “tribal governments” refer to elected officials and other representatives of federally-recognized tribes and other California Native Americans.

This policy is to be read consistent with the Commission’s Tribal Consultation Policy, which requires that the Commission: provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

This policy requires PG&E to notify the appropriate California tribe(s) at the time PG&E determines it will dispose of retained land located in or adjacent to a tribe’s territory.⁵ This policy adopts a preference for the transfer of non-FERC jurisdictional retained land to California tribes consistent with specific considerations, and to the extent that a conflict does not exist with applicable laws or regulations.

The Commission, in adopting this policy, recognizes that:

- Approximately 140,000 acres of watershed property is identified in the LCP, which was developed in accordance with the Stipulation. This land is primarily undeveloped land located in the aboriginal territories of California tribes, or adjacent to or near tribal jurisdictional lands, tribal sacred places or other areas of cultural importance.
- California law and policy encourages consultation and cooperation with tribal governments, particularly concerning the protection of tribal sacred places and cultural resources.
- The purpose of the Land Conservation Commitment, as set forth in the Stipulation, is to establish conservation easements on all lands identified in the

⁴ “California Native American tribe” means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Cal. Pub. Res. Code § 21073. California Native American tribes include both federally recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.

⁵ Tribal territory is defined as the territory designated by the Native American Heritage Commission for notice of projects under AB 52. All notices and consultations required by this policy are to follow the timeframes set out in AB 52 for CEQA consultations.

LCP, including retained lands and lands disposed of in accordance with the Stipulation, D.03-12-035, D.08-11-043, D.10-08-004 and Public Utilities Code Section 851.⁶ The Commission has stated that it would like to see as much land as possible donated through the Stewardship Council process to California tribes.⁷

- The watershed properties included in the LCP hold historical and spiritual significance for California tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants.
- Executive Orders, state laws, policies, and regulations acknowledge legal rights of access to certain lands and require state consultation with affected California Native American tribes prior to taking actions impacting such lands.

Policy Goals: The goals of this policy are as follows:

- Recognize and respect tribal sovereignty.
- Protect tribal sacred places and cultural resources.
- Ensure meaningful consideration of tribal interests and the return of lands within the tribe's aboriginal territory to the appropriate tribe.
- Encourage and facilitate notice and participation in matters before the Commission that involve land transfers subject to the Land Conservation Commitment.

The Commission's review of PG&E's requests to transfer land subject to the Land Conservation Commitment and Stipulation may affect tribes and tribal members in several ways, including, but not limited to: 1) impacts to land use activities on or near tribal communities; 2) the ability to protect and access tribal sacred places and cultural resources; and, 3) provide opportunities to return lands to California tribes that are within their tribal territories.

Facilitating Tribal Government Access to Information:

⁶ All further statutory citations refer to the Public Utilities Code unless otherwise specified.

⁷ February 8, 2018 Commission Voting Meeting.

The Commission will encourage and facilitate tribal government access to information concerning matters before the Commission that involve land transactions subject to the Land Conservation Commitment or retained lands.

- The Commission will require PG&E to notify tribal governments of any plans to dispose of retained land within a tribe's territory.
- The Commission will give special consideration to tribal government requests to participate in Commission proceedings involving requests by PG&E in accordance with section 851 to dispose of retained land. The Commission will grant a tribal government's request to become a party in such proceedings and consider the tribe's comments or protest of PG&E's request for Commission approval of the transaction.⁸ If PG&E fails to provide notice to the appropriate tribe(s) before submitting an application or advice letter requesting Commission approval of the transaction, the Commission will provide the tribe additional time to participate in the proceeding.
- Commission staff and Administrative Law Judges shall ensure that relevant information the Commission receives from a tribe is submitted into the record of a proceeding (including presenting such information to Commissioners where the land transfer is the subject of an advice letter), consistent with the confidentiality provisions of this policy set forth in the Commission's Tribal Consultation Policy.
- Where PG&E seeks approval to transfer non-FERC jurisdictional retained land within a tribe's territory, the tribe shall be deemed the preferred transferee absent a finding supported by substantial evidence that it would be in the public interest to transfer the land to another entity.
- This policy applies to all proposed transfers of non-FERC jurisdictional retained land.

If PG&E submits an application or advice letter consistent with section 851 and relevant Commission decisions for the disposition of retained land, the application or advice letter must include a showing of notice and consultation to the appropriate tribe(s) consistent with the identified tribal territory recognized by the Native American Heritage Commission.⁹ This includes:

- A request to the Native American Heritage Commission to identify tribal entities interested in the area where the property being disposed of is located.

⁸ This will include requests made through application or advice letter.

⁹ The timeframes for notice and response set out in AB 52 will apply for purposes of this policy.

- Written notice of any proposed disposition of retained land in the Tribe's territory prior to any disposition of such land.
- Documentation of communication between PG&E and the Tribe regarding whether or not the Tribe is interested in acquiring the land at issue.

The Commission will grant the tribe a first right of refusal for any PG&E requests to transfer non-FERC jurisdictional retained land. There will be a rebuttable presumption that it is in the public interest to provide tribal entities the first opportunity to acquire such property.

For land transfers pursuant to section 851 of retained land located within a FERC jurisdictional project, the Commission will consider any request by a tribal entity, as well as comments regarding potential impacts on tribal cultural resources and suggested mitigation measures that should be included in any authorization of the Commission for the disposition of such assets as part of the proceeding.

Tribal Liaison:

Consistent with the Commission's Tribal Consultation Policy, the Commission's tribal liaison will assist in implementing this policy. The tribal liaison will act as a point of contact for tribes to seek advice on participating in proceedings and inquiries regarding pending section 851 applications/advice letters; filing documents; contacting Commissioners, advisors, or staff; and other related matters. Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (E-mail: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390).